

811 KAR 1:225. Substance abuse by Authority employees and licensees.

RELATES TO: KRS 230.215, 230.260(1), 230.290(2), (3), 230.310

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the Authority to promulgate administrative regulations under which a license may be denied, suspended, or revoked. This administrative regulation prohibits licensees of the Authority from abusing alcohol or engaging in illegal drug use or activity while performing their duties, provides for drug and alcohol testing, and establishes consequences for violations of this administrative regulation.

Section 1. Definitions. (1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Crimes involving drugs and drug paraphernalia" means all activities involving drugs and drug paraphernalia which are illegal under KRS Chapter 218A or other statutes or administrative regulations of this Commonwealth, and similar laws and regulations of other states and the United States, and which include the use of, possession of, or trafficking in marijuana, cocaine, or any other controlled substances; possession or distribution of drug paraphernalia, or obtaining or using prescription drugs without a valid prescription.

(3) "Documentation" means proof of regular attendance at meetings, counseling sessions, clean drug test results (if suspended for a drug violation), and certification from the treatment program indicating full compliance with treatment and completion of the program.

(4) "Drug paraphernalia" means all equipment, products and material of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug in violation of any law or administrative regulation of this Commonwealth, any state, or the United States.

(5) "Under the influence of intoxicants" means a person's mental or physical abilities are impaired by the presence of alcohol or other drugs in his body to the degree that the person is not able to safely and properly perform his job functions.

Section 2. Prohibited Activities. A licensee shall not:

- (1) Be under the influence of intoxicants while:
 - (a) Engaged in the activities for which the license is held; or
 - (b) On association grounds;
- (2) Commit any crime involving drugs or drug paraphernalia;
- (3) Fail to comply with substance abuse treatment required pursuant to an evaluation conducted under this administrative regulation;
- (4) Tamper with a drug or alcohol test; or
- (5) Refuse to submit to drug or alcohol testing upon request of the Authority, a steward, a judge, or any other authorized employee of the Authority.

Section 3. Evidence of Violation. The following shall be presumptive evidence of a violation of this administrative regulation:

- (1) A breath, urine, or blood test result revealing an alcohol concentration of 0.05 percent or more while:
 - (a) Engaged in the activities for which the license is held; or

- (b) On association grounds;
- (2) A positive result from a drug test for marijuana, cocaine, or other controlled substance for which the licensee does not have a current and valid prescription while:
 - (a) Engaged in the activities for which the license is held; or
 - (b) On association grounds;
- (3) A positive result for a prescribed medication for which the individual has a valid prescription, but the prescription for which indicates that taking the medication may impair vision, impair the ability to perform normal daily functions, or cause drowsiness, or the prescription for which advises using care when operating a car or machinery, while:
 - (a) Engaged in the activities for which the license is held; or
 - (b) On association grounds;
- (4) A positive result indicating more than one (1) prescribed medication for which the individual has valid prescriptions, but the prescription directions for which advise against taking more than one (1) prescribed medication at a time, while:
 - (a) Engaged in the activities for which the license is held; or
 - (b) On association grounds;
- (5) A positive result that exceeds the allowable limit prescribed on the medication label, while:
 - (a) Engaged in the activities for which the license is held; or
 - (b) On association grounds; or
- (6) A conviction in any court of law for a drug-related offense.

Section 4. Discipline. (1) First offense.

- (a) For a first time violation of this administrative regulation, the offender's license shall be suspended for up to thirty (30) days.
- (b) The offender shall be required to undergo an evaluation by a professional in the field of addictive or substance abuse disorders approved by the Authority.
- (c) If the evaluator determines the existence of a substance abuse problem, the offender shall be required to comply with the recommended course of treatment.
- (d) Upon the expiration of seven (7) calendar days from the date of the suspension, the offender may request to be reinstated by the Authority presiding judge.
- (e) For a first time violation of this administrative regulation for an alcohol infraction or crime involving drugs and drug paraphernalia, the presiding judge shall have the discretion to impose a lesser penalty and may excuse the offense for counting purposes under this administrative regulation.

(2) Second offense.

- (a) For a second violation of this administrative regulation within a three (3) year period, the offender's license shall be suspended for up to sixty (60) days.
- (b) The offender shall be required to enroll in and complete a substance abuse program approved by the authority.
- (c) Upon the expiration of sixty (60) calendar days from the date of the suspension, the offender may request to be reinstated by the presiding judge.

(3) Third offense. A third violation of this administrative regulation within a three (3) year period shall result in the revocation of the offender's license.

(4) Zero tolerance offense. Conviction in any court of law of a drug trafficking offense shall result in revocation of the offender's license even if it is a first offense under this administrative regulation.

(5) Preexisting offenses. A previous violation of Section 3 of this administrative regulation relating specifically to intoxication or drug addiction shall be counted as a previous offense under this section.

(6) Fines. A licensee may, in agreement with the Authority, enter into an agreement to mitigate the suspension or revocation by paying a fine of not less than fifty (50) dollars nor more than \$1,000, based upon the factual nature and seriousness of the offense.

(7) In determining the three (3) year period under this administrative regulation, the period shall be measured from the date on which the violation occurred. If the violation is a failure to complete recommended treatment, the violation date shall be calculated from the date of the first missed meeting, or session. For the purposes of subsections (2) and (3) of this section, violations occurring after the three (3) year period shall not be considered.

Section 5. Reinstatement after Suspension. (1) To be reinstated after the first offense the offender shall submit:

- (a) Documentation of the completed evaluation;
- (b) The recommendation of the evaluator in writing; and
- (c) If treatment is recommended, evidence of compliance with the imposed course of treatment.

(2) To be reinstated after the second offense, the offender shall submit documentation of compliance with the imposed course of treatment.

- (3) Continuing compliance with treatment.

(a) If an offender is reinstated before the completion of the imposed course of treatment, continuing compliance with treatment shall be required.

(b) Documentation of continued compliance and final completion of treatment shall be provided upon request to the presiding judge or other employee authorized by the Authority.

(c) Failure to comply with and complete the imposed course of treatment after reinstatement shall be an additional violation of this administrative regulation.

Section 6. In deciding whether drug tests should be administered, the presiding judge may require:

- (1) All licensees to be tested on a particular day;

- (2) Licensees on a particular day to be tested totally at random; or

(3) Those licensees that the presiding judge has a reasonable suspicion may be under the influence of intoxicants to submit to drug and alcohol testing.

(4) In determining whether there is reasonable suspicion to require testing, the presiding judge may consider any of the following factors:

(a) Unexplained or continued violations of KRS Chapter 230 or 811 KAR Chapter 1 which have a detrimental effect on racing;

(b) Involvement in any accident which causes injury to a person or animal at the track as well as any near accident which creates a clear danger of accident or injury to a person or animal at the track;

(c) Willful conduct detrimental to horse racing as evidenced by continued violations of KRS Chapter 230 or 811 KAR Chapter 1, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track;

- (d) Observable physical or emotional impairment at the track;

(e) Involvement in a race of questionable outcome or circumstance as determined by the presiding judge;

- (f) Willful abuse of an animal or person who is engaged in a race, work, or exercise at the track;

(g) Prior positive drug or alcohol test or tests in this or other jurisdictions, excluding those for which where a valid legal prescription is provided;

(h) Performance of prescribed duties in a manner which indicates a best effort to win is not present at the track;

- (i) Information supplied by:

1. A law enforcement agency;
 2. The United States Trotting Association;
 3. The Kentucky Horsemen's Association;
 4. The Standardbred Investigative Services;
 5. The Association or Racing Commissioners International; or
 6. The racing commission of any state or country;
- (j) Any other conduct at the track which can be documented and which provides reasonable grounds to suspect:
1. Dependence on, possession of, or usage of a controlled substance; or
 2. An alcohol violation;
- (k) Refusal to provide a urine or blood sample if requested to do so in accordance with 811 KAR Chapter 1; or
- (l) Recent arrest or pending criminal charges regarding the sale, possession, manufacture, cultivation, or use of illegal drugs.

Section 7. Payment for Expenses Related to this Administrative Regulation. A licensee shall be responsible for all or part of the expenses associated with violating this administrative regulation, including the cost of treatment and reinstatement of the license. The responsibility for payment of expenses shall be as follows:

(1) For a first offense, the offender's responsibility for costs shall be based upon consideration of the factors set forth in Section 6(4)(a) through (l) of this administrative regulation, and determined by the presiding judge or other authorized Authority employee.

(2) For a second offense, the offender shall bear all costs.

(3) For a drug or alcohol test initiated by the Authority to determine if a violation has occurred, the Authority shall bear the cost unless the test reveals a violation. If the test reveals a violation, subsections (1) and (2) of this section shall apply.

(4) Failure to pay any costs imposed shall be grounds for denial of reinstatement.

Section 8. Administration of Administrative Regulation. The Authority shall employ a competent individual to oversee and assist in the administration of this administrative regulation. The presiding judge of the Authority shall enforce this administrative regulation under the direction of the Authority and its authorized employee. (12 Ky.R. 1807; eff. 6-10-86; Am. 14 Ky.R. 1663; eff. 3-10-88; 28 Ky.R. 2268; 2586; eff. 6-14-2002; 29 Ky.R. 2375; 2703; eff. 5-15-03; 33 Ky.R. 991; 2968; eff. 4-6-07.)